

General Information Letter: Statute of limitations for collection of assessed tax is discussed.

September 21, 2000

Dear:

This is in response to your letter dated August 22, 2000 in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

Please be advised that we represent the above referenced taxpayer (copy of Power of Attorney Form IL-2848 enclosed). This is in response to the enclosed Notice of Levy on Wages, Salary and Other Income dated July 28, 2000, indicating tax, penalty and interest due for the tax years 1981, 1982, 1987, 1989 and 1995. Pursuant to my telephone conference with Patricia Dickinson, Illinois Department of Revenue Wage/Bank Levy Unit, (217) 785-9987, ext. 3-1726, I inquired as to whether the proposed amounts due for the years 1981, 1982, 1987 and 1989 were unenforceable due to the expiration of the statutory period for collection. She indicated that this issue should be directed to your department.

## **DISCUSSION**

The deficiencies for years 1981, 1982, and 1987 were all received by the Department as federal case files. The 1989 return was filed by the taxpayer. The 1981 and 1982 returns were received in February of 1991 with a lien filed on 11/8/93. The 1987 case was received in the Department November of 1993 with a lien filed on 10/31/96. The 1989 return was filed in April of 1990 but was accompanied by a bad check. Notice for the 1989 deficiency was sent on 8/13/90 with a lien filed on 4/1/93. The 1995 deficiency appears to be paid in full. The statute of limitations for Illinois income tax purposes can be found at §905 which states in part:

In general. Except as otherwise provided in this Act:

- (1) A notice of deficiency shall be issued not later than 3 years after the date the return was filed, and
- (2) No deficiency shall be assessed or collected with respect to the year for which the return was filed unless such notice is issued within such period.

As noted, however, several exceptions exist to the general rule. An exception found at §905(e) states:

(e) Report of federal change. In any case where notification of an alteration is given as required by Section 506(b), a notice of deficiency may be issued at any time within 2 years after the date such notification is given, provided, however, that the amount of any proposed assessment set forth in such notice shall be limited to the amount of any deficiency resulting under this Act from recomputation of the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the reported alteration.

Accordingly, once a federal change was reported the department would have two years from the date of the notification to issue a notice of deficiency. Moreover, it is the taxpayer's duty to notify the Department of such change. If the taxpayer does not notify the Department (which it appears xxxxxxxxx did not) then §905(d) controls. Section 905(d) states:

Failure to report federal change. If a taxpayer fails to notify the Department in any case where notification is required by Section 304(c) or 506(b), or fails to report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, a notice of deficiency may be issued at any time.

As such, if the taxpayer does not inform the Department of the federal change, a notice of deficiency may be issued at any time. As regards the 1989 assessment, the lien was filed within three years of the notice of assessment.

The question of the liens duration is covered by §1101 and 1104. Section 1101(d) maintains that:

Notice of lien. The lien created by assessment shall terminate unless a notice of lien is filed, as provided in section 1103 hereof, within 3 years from the date all proceedings in court for the review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted. Where the lien results from the filing of a return without payment of the tax or penalty shown therein to be due, the lien shall terminate unless a notice of lien is filed within 3 years from the date such return was filed with the Department. For the purposes of this subsection (c), a tax return filed before the last day prescribed by law, including any extension thereof, shall be deemed to have been filed on such last day. (Source: P.A. 86-905.)

The lien itself has a duration of twenty years as §1104 states:

The lien provided herein shall continue for 20 years from the date of filing the notice of lien under the provisions of section 1103 unless sooner released, or otherwise discharged. The provisions of this amendatory Act of 1984 shall apply to any lien which has not expired on or before the effective date of this amendatory Act of 1984. (Source: P.A. 83-1416.)

Accordingly, the lien has a total duration of twenty-three years, three years to file the notice followed by the twenty years of the lien's duration.

The Department has additional powers beyond those mentioned above. Regardless of the lien mechanism, §902(c) gives the Department the power to bring an action for recovery of taxes at any time. Section 902(c) states:

Action for recovery of taxes. ***At any time*** that the Department might commence proceedings for a levy under Section 1109, ***regardless of whether a notice of lien was filed under the provisions of Section 1103***, it may bring an action in any court of competent jurisdiction within or without this State in the name of the people of this State to recover the amount of any taxes, penalties and interest due and unpaid under this Act. In such action, the certificate of the Department showing the amount of the delinquency shall be prima facie evidence of the correctness of such amount, its assessment and of the compliance by the Department with all the provisions of this Act. (emphasis added).

Even the notice of lien does not have to be filed by virtue of §1109, which states in pertinent part:

No proceedings for a levy under this Section shall be commenced more than 20 years after the latest date for filing of the notice of lien under the provisions of Section 1103, ***without regard to whether such notice was actually filed***. (emphasis added).

Accordingly, even if the notice of lien is not filed, the Department only loses its priority with regard to other lienholders. Based on the facts recited above, the statute of limitations on collection of assessed taxes has not expired for any of the years involved.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

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